

**United States Department of Labor
Employees' Compensation Appeals Board**

K.K., Appellant

and

**U.S. POSTAL SERVICE, SUWANEE POST
OFFICE, Suwanee, GA, Employer**

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**Docket No. 19-1460
Issued: August 11, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On June 24, 2019 appellant filed a timely appeal from an April 29, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$2,760.04 for the period June 25 through July 21, 2018 for which she was without fault because she continued to receive compensation following her return to work; (2) whether OWCP

¹ The Board notes that, following the April 29, 2019 decision, appellant submitted additional evidence to OWCP and to the Board on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

² 5 U.S.C. § 8101 *et seq.*

properly denied waiver of recovery of the overpayment; and (3) whether it properly required recovery of the overpayment by deducting \$225.00 every 28 days from appellant's continuing compensation.

FACTUAL HISTORY

On August 26, 2015 appellant, then a 54-year-old postal carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 17, 2015 she injured both knees when she picked up large, heavy boxes while in the performance of duty. On October 8, 2015 OWCP accepted her claim for strain of the knees, bilaterally. On October 8, 2015 appellant accepted a light-duty position, working four hours a day with restrictions. OWCP paid appellant wage-loss compensation on the supplemental rolls as of October 3, 2015.

On May 10, 2016 OWCP expanded the acceptance of appellant's claim to include exacerbation of osteoarthritis of the knees, bilaterally. Beginning October 25, 2016 it paid her wage-loss compensation on the periodic rolls for total disability from work. Appellant returned to full-time modified-duty work on December 5, 2016. However, she stopped work again and on August 9, 2017 OWCP returned appellant to the periodic rolls.

On May 10, 2018 appellant's treating physician released her to return to limited-duty sedentary work, with occasional standing or walking, and lifting and carrying no more than 10 pounds.

In a letter dated May 18, 2018, OWCP directed the employing establishment to provide appellant a limited-duty position within her restrictions. On June 4, 2018 it referred her for vocational rehabilitation counseling.

By letter dated June 5, 2018, the employing establishment offered appellant a limited-duty position of modified rural carrier and afforded her until June 8, 2018 to accept the position.

On June 25, 2018 appellant's vocational rehabilitation counselor conducted a site visit at the employing establishment with appellant. She noted that appellant had agreed to accept the offered light-duty position of modified rural carrier, but that some of the duties exceeded appellant's limitations on walking and standing. On June 25, 2018 appellant accepted the modified rural carrier position with a variety of restrictions.

In a letter dated July 25, 2018, the employing establishment noted that it had presented a job offer to appellant for return to work on June 11, 2018. It noted that, to date, it had not received the offer accepted or refused, but that appellant had informed her manager by telephone on June 12, 2018 that she was refusing the offer and that she was not obliged modified job offer.

On July 31, 2018 the vocational rehabilitation counselor indicated that appellant had accepted the modified rural carrier position, and that the effective return-to-work date was June 25, 2018.

In a letter dated August 1, 2018, OWCP noted that appellant had returned to work on June 25, 2018 and that her actual wages met or exceeded the wages of the position she held when she was injured. It terminated her compensation effective June 25, 2018 as she no longer had any

employment-related disability. OWCP further noted that a final 28-day compensation payment that partially covered a period following appellant's return to work had been issued, resulting in excess payment of \$3,055.83. It directed her to repay this amount.

On July 25, 2018 the vocational rehabilitation counselor noted that, as of June 26, 2018, one of appellant's physicians had directed her not to return to work until July 2, 2018.

On August 6, 2018 the employing establishment completed a report of termination of disability (Form CA-3) indicating that appellant had returned to work on June 25, 2018.

In an August 20, 2018 preliminary overpayment determination, OWCP found that appellant received an overpayment of compensation in the amount of \$2,760.04 for the period June 25 through July 21, 2018 because she continued to receive wage-loss compensation after returning to full-time work. It determined that she was at fault in the creation of the overpayment because she accepted a payment that she knew or should have known was incorrect. OWCP attached a memorandum explaining its overpayment calculation. It provided her with her appeal rights and a Form OWCP-20, overpayment recovery questionnaire. OWCP afforded appellant 30 days for a response.

On September 5, 2018 appellant requested a precoupment hearing and requested waiver of recovery of the overpayment. She disagreed with the amount of the overpayment and disagreed that she was at fault. Appellant further asserted that she did not return to work until July 2, 2018.

With the hearing request, appellant submitted a completed Form OWCP-20, wherein appellant indicated that her total monthly income was \$5,200.00 and that her total monthly expenses were \$3,400.00. She further indicated that she had assets of \$13,500.00. Appellant also provided an e-mail from her vocational rehabilitation counselor dated July 4, 2018, noting receipt of a statement from appellant's doctor releasing her to return to work, effective July 2, 2018.

The precoupment hearing was held on February 13, 2019. Appellant testified that she signed the modified job offer on June 26, 2018, but did not return to work until July 2, 2018. OWCP's hearing representative requested a copy of appellant's paystubs to ascertain her correct return to work date. He also requested additional financial information to determine the appropriate rate of recovery from appellant's continuing compensation benefits.

By decision dated April 29, 2019, OWCP's hearing representative found that appellant had received an overpayment of compensation in the amount of \$2,760.04 for the period June 25 through July 21, 2018 because she continued to receive wage-loss compensation following her return to work. He determined that she had not substantiated her allegation that she returned to work on July 2, 2018 rather than on June 25, 2018, as reported by the employing establishment. OWCP's hearing representative further found that appellant was without fault in the creation of the overpayment as the overpayment was the result of an initial direct deposit after her return to work. He denied waiver of recovery of the overpayment as appellant had not provided documentation of her monthly expenses. OWCP's hearing representative determined that the overpayment would be recovered by deducting \$225.00 every 28 days from appellant's continuing compensation as this amount would minimize interest charges and hardship on appellant while allowing for recovery of the overpayment within a reasonable amount of time.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³

Section 8116 of FECA defines the limitations on the right to receive compensation benefits.⁴ This section of FECA provides that, while an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States, except in limited circumstances.⁵ OWCP's regulations provide, in pertinent part, that compensation for wage loss due to disability is available only for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.⁶ A claimant is not entitled to receive temporary total disability and actual earnings for the same period.⁷ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation because she continued to receive wage-loss compensation following her return to work.

OWCP placed appellant on the periodic rolls on August 9, 2017. However, appellant continued to receive wage-loss compensation on the periodic rolls for total disability from work through July 21, 2018. As noted above, a claimant is not entitled to receive compensation for total disability during a period in which he or she had actual earnings. Therefore, an overpayment of compensation was created in this case.⁹

The Board further finds, however, that the case is not in posture for decision with regard to the period and amount of the overpayment. OWCP determined that appellant had received an overpayment of compensation in the amount of \$2,760.04 for the period June 25 through July 21,

³ 5 U.S.C. § 8102.

⁴ *Id.* at § 8116(a).

⁵ *Id.*

⁶ 20 C.F.R. § 10.500.

⁷ *G.R.*, Docket No. 19-0940 (issued December 20, 2019); *J.H.*, Docket No. 17-0592 (issued May 1, 2018).

⁸ *Id.*; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.2(a) (September 2018).

⁹ *L.H.*, Docket No. 20-0115 (issued September 4, 2020); *E.R.*, Docket No. 19-1365 (issued December 23, 2019); *J.L.*, Docket No. 18-1266 (issued February 15, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *B.H.*, Docket No. 09-0292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.1(a) (September 2018).

2018, finding that OWCP continued to pay her wage-loss compensation following her return to work on June 25, 2018. The case record, however, is unclear as to appellant's exact return to work date. While, the employing establishment indicated that appellant had returned to work on June 25, 2018, the vocational rehabilitation counselor noted that as of June 26, 2018 one of appellant's physicians had directed her not to work until July 2, 2018. Appellant also asserted that she did not return to work until July 2, 2018.

OWCP has the burden of proof to establish the period and amount of an overpayment.¹⁰ OWCP's procedures provide that it will usually receive notification of the return-to-work date from the claimant, the employing establishment, and/or the field nurse or vocational rehabilitation counselor. Once confirmed, the claims examiner should delete the claimant from the periodic rolls and enter the return-to-work date (first date of non-entitlement). The overpayment will then be automatically calculated based on this return to work date.¹¹

As there remains conflicting information regarding appellant's return to work date, the period and amount of the overpayment have not been established. The case shall therefore be remanded for OWCP to obtain additional information confirming the precise period and amount of the overpayment. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial information. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's overpayment.¹²

CONCLUSION

The Board finds that OWCP properly determined that an overpayment of compensation was created. The Board further finds, however, that the case is not in posture for decision regarding the period and amount of the overpayment.

¹⁰ See *D.R.*, Docket No. 19-1675 (issued October 8, 2020); *T.W.*, Docket No. 19-1266 (issued September 25, 2020); *C.P.*, Docket No. 19-0317 (issued July 1, 2019) (finding that OWCP did not meet its burden of proof to establish an overpayment when it failed to document whether and when a claimant elected life insurance coverage after separation from federal service or retirement in order to establish fact of overpayment of compensation.)

¹¹ *Supra* note 8 at Chapter 6.0200.1a (September 2018).

¹² In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 11, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board